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Supreme Court, U.S.
FILED
DEC 2 1996
CLERK

No. 95-974

In The
Supreme Court of the United States
October Term 1995

Arizonans for Official English and Robert D. Park,
Petitioners

v.

State of Arizona; Maria-Kelly F. Yniguez; Jaime Gutierrez; and Arizonans Against Constitutional Tampering
Respondents

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONERS

BARNABY W. ZALL
Counsel of Record for Petitioners
1155 21st St., N.W. #300
Washington, D.C. 20036
(202) 659-8201

November 30, 1996

5 pp

I. Arizona Supreme Court Accepts Review in *Ruiz*, But Stays All Proceedings Pending This Court's Decision.

In their Reply Brief, Petitioners reprinted the Arizona Court of Appeals decision in *Ruiz v. Symington*, No. 1 CA CV94-0235 (Ariz. App., August 1, 1996). In *Ruiz*, the Arizona Court of Appeals, without reaching the merits, deferred to the Ninth Circuit's decision below. Reply App. a9.

The State requested the Arizona Supreme Court to review the Arizona Court of Appeals' decision. State Defendants' Petition for Review in *Ruiz*, *supra*, at 1. The State attached its Respondent's Brief from this case. *Id.*, at Appendix. The *Ruiz* plaintiffs did not object to the State's request for review, attaching Arizonans Against Constitutional Tampering's Respondent's Brief from this case. Plaintiffs-Respondents' Motion for the Court to Take Judicial Notice, at I.

On November 19, 1996,[1] the Arizona Supreme Court granted review in *Ruiz*, and further ordered: "All proceedings are stayed pending decision by the United States Supreme Court." Supplementary Brief App. 1a.

II. Ninth Circuit Decides Government Employee Speech On-The-Job Case, Again Inverting This Court's Government Speech Cases.

On October 4, 1996, the Ninth Circuit decided *Tucker v. Cal. Dept. of Education*, 97 F.3d 1204 (9th Cir. 1996). A government employee placed the phrase "Servant of the Lord Jesus Christ" and the acronym "SOTLJC" after his name on his government material. 97 F.3d at 1208. The Ninth Circuit, in an opinion by Judge Reinhardt, struck down the Department's resulting ban on religious displays and advocacy in the workplace. 97 F.3d at 1207.

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[1]Received by Petitioners on November 29, 1996, *reprinted* in App. hereto.

Although Petitioners have no position on the merits of the *Tucker* decision, the Ninth Circuit continues to invert this Court's recent "government speech" cases, misunderstanding the point that **government's interest in speech depends on the speaker's proximity to government**. The closer to government, the greater the government's interest.

In *Board of County Commissioners v. Umbehr*, 116 S.Ct. 2342, 2350 (1996), for example, this Court identified a speech "spectrum" which ranges from:

> government employees, whose close relationship with the government requires a balancing of important free speech and government interests, to . . . . users of public facilities . . . and recipients of small government subsidies, who are much less dependent on the government but more like ordinary citizens whose viewpoints on matters of public concern the government has no legitimate interest in repressing.

116 S. Ct. at 2350 (citations omitted).

Thus, the *Umbehr* speech spectrum might look like this:

Closeness to Government —>

A----------B----------C----------D---------->

Private	Public	Public	Government
Persons	Facilities	Employees	Speech[2]

In contrast, the Ninth Circuit, in *Tucker*, said, "[t]he government has a greater interest in controlling what materials are posted on its property than it does in controlling the speech of the people who work for it. . . " 97 F.3d at 1214. The Ninth Circuit's *Tucker* analysis reverses Points B and C on the *Umbehr* spectrum, just as, in this case, the Ninth Circuit

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[2]This portion of the speech spectrum - point D, when government itself speaks - is the issue here, but is not discussed explicitly in *Tucker* or *Umbehr*.

inverted government's power over its own speech and over that of those it employs to speak for it (*i.e.*, placing Point D before Point C). *See, e.g.*, Pet. App. 40a n. 24 (government speech cases, such as *Rosenberger v. Rector and Visitors of Univ. of Va.*, 115 S.Ct. 2510 (1995), and *Rust v. Sullivan*, 500 U.S. 173 (1991), apply only to speech of private parties). This spectral reversal is contrary to *Umbehr* and other government speech cases.

Tucker demonstrates once again why the *en banc* majority decision below should be reversed, and Article XXVIII upheld as not violating the First Amendment.

RESPECTFULLY SUBMITTED,

BARNABY W. ZALL
Counsel of Record for Petitioners
1155 21st St., N.W. #300
Washington, D.C. 20036
(202) 659-8201

Supreme Court
State of Arizona

November 22, 1996

Re: ARMANDO RUIZ/LINDA AGUIRRE/JOHN PHILIP EVANS et al vs. J. FIFE SYMINGTON, III/GRANT WOODS/STATE OF ARIZONA et al
Supreme Court No. CV-96-0493-PR
Court of Appeals No. 1 CA-CV 94-0235
Maricopa County No. CV 92-19603
United States Supreme Court No. 95-974

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on November 19, 1996, in regard to the above-referenced cause:

ORDERED: Plaintiffs-Respondents' Motion for the Court to Take Judicial Notice = GRANTED.

FURTHER ORDERED: State Defendants' Petition for Review = GRANTED.

FURTHER ORDERED: All proceedings are stayed pending decision by the United States Supreme Court.

The Clerk of the Court of Appeals, Division One, Phoenix, shall forward the remaining record to the Clerk of the Supreme Court.

NOEL K. DESSAINT, Clerk.